

MOLYBDENUM CORPORATION OF AMERICA

IBLA 70-141 (Supp.)

Decided August 15, 1973

Motion to set aside prior decision, to cancel hearing and deny application for a right-of-way.

Motion granted.

Rights-of-Way: Applications -- Secretary of the Interior -- Wild and Scenic Rivers Act

Where the Secretary of the Interior has decided that an application for a right-of-way across land which is a component of the wild and scenic rivers system is to be rejected, the application will be rejected by the Board.

OPINION BY MR. RITVO

In Molybdenum Corporation of America, 4 IBLA 53 (1971), the Board directed that Molybdenum's application for a pipeline right-of-way be referred to a Hearing Examiner (now Administrative Law Judge) for a hearing to develop evidence as to certain issues of fact.

The Field Solicitor, Santa Fe, New Mexico, appearing for the Bureau of Land Management, filed a motion requesting that our decision be set aside, the hearing be canceled, and the Bureau of Land Management decision denying the application be affirmed.

The background of the case is fully set out in the prior decision.

The Field Solicitor directed the Board's attention to a plan for the development of the Rio Grande segment of the Wild and Scenic River System which Assistant Secretary Harrison Loesch submitted to Congress on October 1, 1969, in accordance with secs. 3(a)(4) and 3(b) of the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1274(2)(a) and 1274(b) (1970). The report is House Document No. 91-174, 91st Congress, 1st Session.

The supplemental information forwarded with the plan discussed mining operations along this segment of the Rio Grande. After reviewing Molybdenum's operational plans and disposal methods, it said:

The company has proposed to discharge decant water from the projected tailings pond into the wild river stretch of the Rio Grande instead of returning it to its present outlet into Red River above the Wild River area. To discharge into the Rio Grande will probably require an easement from the Bureau of Land Management. We will reject any such application. We will also object to decant discharge which would threaten water quality.

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The Board of Land Appeals was not aware of the plan and supplemental information at the time it considered the appeal. Neither the applicant, the Bureau, nor any of the intervenors had called them to the Board's attention.

In a memorandum dated April 7, 1973, the Director, Office of Hearings and Appeals, referred the Secretary to the Board's decision and to the points raised by the Field Solicitor's motion. The memorandum asked whether the Secretary adheres to the views expressed in the supplemental statements and noted that if he did the Board would reject Molybdenum's application.

On May 21, 1973, the Assistant Secretary, Land and Water Resources, wrote the Director that the application had been reviewed and that the views expressed in the supplemental statement forwarded to Congress with the development plan correctly reflect the Departmental position.

Accordingly, the application must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's prior decision is set aside, and the Molybdenum's application is rejected.

Martin Ritvo, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member

